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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,619	02/16/2000	Ronald A. Katz	251/002	6020

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EXAMINER

GARG, YOGESH C

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/505,619

Applicant(s)

KATZ ET AL.

Examiner

Yogesh C Garg

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

12/8/2003
THE REPLY FILED 12/8/2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


Jeffrey A. Smith
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: The arguments proposed by the applicant to traverse rejection of claims 172-183, 195, 200-207, 212-214, and 219 are similar to the ones presented in the earlier amendment C to which the examiner's response was mailed on 09/22/2003 in the earlier office action, paper # 15. Therefore, the rejection of claims 172-183, 195, 200-207, 212-214, and 219 under U.S.C. 103 (a) as being unpatentable over Walker/Kenney is maintained. Further, the applicant's arguments regarding claims 184-188, 189-194, 208-211 rejected as being obvious over Walker/Kenney and in further view of Official Notice have been considered but are not persuasive for following reasons:

(a) The limitations recited in claims 184-188, 189-194, and 208-211 are of a notoriously old and well-known nature at the time of the applicant's invention.

(b). The applicant has neither submitted an adequate evidence or specifically pointed out supposed errors to invalidate the factual statements made by the examiner in using Official Notice to render the said claims obvious. See MPEP 2144.03 C: "If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

(c). The applicant argues that there is no motivation in Walker or Kenney to combine the facts of Official Notice. The examiner does not agree as the motivation is provided in the earlier office action on pages 10-13 as why the official notice facts should be combined with the teachings of Walker/Kenney and the motivation is explicitly disclosed as a part of the well-known facts and knowledge.

(d) In view of the inadequate traversal of the rejections of claims 184-188, 189-194 and 208-211 as analyzed above, as per MPEP 2144.03 C, the Official Notice statements made based upon common knowledge or well-known art, in the earlier office action, paper # 15, are taken as admitted prior art by the applicant..

Continuation of 10. Other: The applicant has withdrawn claims 220-272. On page 10 of the instant amendment claim 249 recites (new), which is a typographical error and it should be replaced by (withdrawn)..